

Chapter 6 PUBLIC SAFETY AND MORALS

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Article 1 UNIFORM PUBLIC OFFENSE CODE

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Section 6.1.1 Incorporating Uniform Public Offense Code

There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City of Bel Aire, Kansas, that certain uniform public offense code known as the "Uniform Public Offense Code for Kansas Cities," Edition of 2016, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except certain articles, sections, parts or portions as are hereafter omitted, deleted, modified, amended, added or changed. No fewer than one (1) copy of said Uniform Public Offense Code shall be marked "Official Copy as adopted by Ordinance No. _____", such ordinance number to be that associated with the annual recodification, with all sections or portions thereof intended to be omitted, amended, added or changed clearly marked to show any such omission, addition or change and to which shall be attached a copy of that Ordinance, and this Chapter 6, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours. The Police Department, Municipal Judge and all administrative departments of the City charged with enforcement of the Code shall be supplied, at the cost of the City, such number of official copies of such Uniform Public Offense Code similarly marked, as may be deemed expedient.

Section 6.1.2 Adding Section 6.8a, Unlawfully Depositing Solid Waste, to the Uniform Public Offense Code.

Section 6.8a, Unlawfully Depositing Solid Waste, shall be added as follows:

Unlawfully Depositing Solid Waste is depositing or causing to be deposited any solid waste into, upon or about:

(a) any highway, street, alley, right-of-way, sidewalk, park or other public place, unless within a receptacle provided for public solid waste, or any lake, stream, watercourse, or other body of water except by direction of some public official or employee authorized by law to direct or permit such acts;

(b) any private property without the consent of the owner or occupant of such property; or

(c) into any private waste receptacle, not maintained for public use, without the permission of the owner/lessee of such private waste receptacle.

For the purpose of this section, "Solid waste" includes, but is not limited to, putrescible waste resulting from the handling, processing, storage, packaging, preparation, sale, cooking and serving of meat, produce and other foods and nonputrescible materials such as paper, tin cans, bottles, glass, ashes, lawn and tree waste, appliances, furniture, electronics, construction waste, batteries, tires, motor oil and hazardous materials. Depositing an object within any waste receptacle, or leaving an object upon public or private property in a manner that conveys such object(s) to be abandoned by the owner, shall be prima facie evidence that such object(s) is deemed "solid waste" by such owner.

Unlawfully Depositing Solid Waste is a class C violation.

Section 6.1.3 Adding Section 7.15, Resisting Arrest, to the Uniform Public Offense Code.

Resisting Arrest is the use or force, or threat of force, to resist, obstruct or interfere with the arrest of a person or persons by a law enforcement officer or by a private person summoned and directed by a law enforcement officer to make the arrest, even if the person being arrested or other person resisting, obstructing or interfering with the arrest believes the arrest is unlawful.

Resisting Arrest is a class A violation.

Section 6.1.4 Adding Section 7.16, Intimidation of a Witness or Victim, to the Uniform Public Offense Code.

Intimidation of a witness or victim is knowingly and maliciously preventing or dissuading, or attempting to prevent or dissuade:

(1) Any witness or victim from attending or giving testimony at any criminal trial, proceeding or inquiry authorized by law; or

(2) any witness, victim or person acting on behalf of a victim from:

(A) making any report of the victimization of a victim to any law enforcement officer, prosecutor, probation officer, parole officer,

correctional officer, community correctional services officer or judicial officer;

(B) causing a complaint, indictment or information to be sought and prosecuted, or causing a violation of probation, parole or assignment to a community correctional services program to be reported and prosecuted, and assisting in its prosecution;

(C) causing a civil action to be filed and prosecuted and assisting in its prosecution; or

(D) arresting or causing or seeking the arrest of any person in connection with the victimization of a victim.

Intimidation of a Witness or Victim is a class B violation.

Section 6.1.5 Adding Section 9.14, Urinating In Public, to the Uniform Public Offense Code.

Urinating in Public is urinating upon any highway, street, alley, sidewalk, park, upon the premises of any public place or building, or upon any public or private property in open view of any person, when the same has not been designed or designated as a rest room.

Urinating in Public is a class C violation.

Section 6.1.6 Adding Section 9.15, Window Peeping, to the Uniform Public Offense Code.

Any person, other than the occupants of the room, dwelling, apartment, rooming house, or apartment house involved, who goes upon private property, without the permission of the owner or lessee thereof, and looks into a window of such room, dwelling, apartment, rooming house, or apartment house to observe the personal conduct of any other person or persons entitled to privacy therein is guilty of “window peeping”.

Window Peeping is a class C violation.

Section 6.1.7 Adding Section 10.24, Possession of Drugs, to the Uniform Public Offense Code.

Possession of Drugs is manufacturing, possessing, controlling, prescribing, administering, delivering, distributing, dispensing, or compounding any depressant, stimulant or hallucinogenic drug in violation of the Kansas Uniform Controlled Substances Act (K.S.A. 65-4101 et seq., and amendments thereto).

Possession of Drugs is a class A violation.

Section 6.1.8 Adding Section 10.25, Possession of Marijuana, to the Uniform Public Offense Code.

Possession of Marijuana is possessing or controlling marijuana in violation of the Kansas Uniform Controlled Substances Act (K.S.A. 65-4101 et seq., and amendments thereto).

Possession of Marijuana is a class A violation.

Section 6.1.9, Adding Section 10.26, Possession of Drug Paraphernalia, to the Uniform Public Offense Code.

Possession of Drug Paraphernalia is possessing or controlling any instrument, device or drug paraphernalia which is used to possess, conceal, smoke, administer, manufacture, or sell any illegal drug pursuant to the Kansas Uniform Controlled Substances Act (K.S.A. 65-4101 et seq., and amendments thereto).

Possession of Drug Paraphernalia is a class A violation.

Article 2 NON-VEHICLE SOUND AMPLIFICATION SYSTEMS

Section 6.2.1 Sound Amplification Systems Prohibited

Section 6.2.2 Definitions

Section 6.2.3 Affirmative Defense

Section 6.2.1 Sound Amplification Systems Prohibited

No person in an open space or within a structure, whether on public or private property, shall operate or permit the operation of any sound amplification system so that the sound is audible at a distance of 150 or more feet from the sound amplification system. (Ord. 375)

Section 6.2.2 Definitions

“Sound amplification system” means any radio, tape player, compact disc player, loud speaker, or other electronic device used for the amplification of sound.

“Audible” means any sound produced by a sound amplification system which clearly can be heard at a distance of 150 feet or more. Words or phrases need not be discernible and bass reverberations are included.

“Heard” means perceived by the auditory senses.

Distance may be measured upon direct line of sight. (Ord. 375)

Section 6.2.3 Affirmative Defense

It is an affirmative defense to a charge under this Article that the operator was not otherwise prohibited by law from operating the sound amplification system, and that either of the following apply:

1. The system was being operated to request medical or other emergency assistance or to warn of a hazardous condition;
2. The system was used in authorized public activities, such as parades, fireworks, sports events, musical productions and other activities which have the approval of the Governing Body of the City of Bel Aire or the department of the City of Bel Aire authorized to grant such approval. (Ord. 375)

Article 3 CURFEW

Section 6.3.1 Curfew Hours

Section 6.3.2 Permitting Children to Violate Curfew

Section 6.3.3 Penalty

Section 6.3.1 Curfew Hours

It shall be unlawful for any person under sixteen (16) years of age to be or remain upon any street or alley or in any other public place in the city between the hours of 11:30 p.m. and 6:00 a.m. unless such person is accompanied by a parent, guardian, or other person having custody of such minor or unless in the performance of an emergency errand or legitimate business directed by such parent, guardian, or other person having custody, making it necessary to be in such places after 11:30 p.m. (Ord. 191)

Section 6.3.2 Permitting Children to Violate Curfew

It shall be unlawful for anyone having the legal care and custody of any person under sixteen (16) years of age to allow or permit such person to go or be upon any street or alley or in any other public place in the city between the hours of 11:30 p.m. and 6:00 a.m. unless such minor is accompanied by a parent, guardian, or other person having custody of such minor or unless in the performance of an emergency errand or legitimate business directed by such parent,

guardian, or other person having custody, making it necessary to be in such places after 11:30 p.m. (Ord. 191)

Section 6.3.3 Penalty

Juvenile. Any person under sixteen (16) years of age violating this curfew shall be dealt with in accordance with juvenile court law and procedure.

Parent or Guardian. Any police officer finding a person under sixteen (16) years of age violating this curfew shall promptly cause a written notice to be served upon the parent, guardian, or other person having legal care and custody of such minor, setting forth the manner in which the curfew has been violated. Any parent, guardian, or other person having legal care and custody of a person under sixteen (16) years of age who shall permit such minor again to violate this curfew after receiving written notice of a prior curfew violation shall be subject to prosecution under the section.

Violation of this section shall be an unclassified misdemeanor, and the penalty for violation shall be a fine of not less than \$25.00 and not more than \$500.00. (Ord. 191)

Article 4 FIREWORKS

Section 6.4.1	Fireworks – Unlawful to violate Article
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Section 6.4.1**Fireworks**

Except as hereinafter provided, it shall be unlawful for any person to sell display, detonate, discharge, and/or ignite fireworks as defined by the regulations of the Fire Marshal of the State of Kansas, within the corporate limits of the City.

Section 6.4.2**Permit to Sell or Transfer Fireworks; Purpose**

The purpose of issuing a permit for the sale or transfer of fireworks pursuant to this Article is to permit a location for the sale of fireworks within the City while controlling the inconvenience, interference with pedestrian and vehicular traffic and danger to the public that may arise from the unregulated placement of said sale location(s).

Section 6.4.3**Sale or Transfer of Fireworks; Permit Required**

It shall be unlawful for any person to sell, display for sale, offer to sell or give away any type of fireworks with the City without first paying the appropriate permit fee per establishment or premises to the City Clerk securing a permit prior to June 16th of the year for which such permit is requested. All references to “permit” within this Article shall refer to a permit issued pursuant to this section, unless specifically identified as a “Public Display Permit.”

Section 6.4.4**Permit Fee**

The permit fee is based upon the total square footage of the tent, shed or other structure where fireworks are to be sold or displayed for sale. The permit fee for a tent, shed or other structure with a total square footage of up to 2500 square feet shall be \$2,500.00. The permit fee for a tent, shed or other structure with a total square footage in excess of 2500 square feet shall be a sum equal to one (1) dollar per square foot. The permit fee shall only be refundable upon failure of the applicant for permit to qualify for the permit.

Section 6.4.5**Public Display of Fireworks; Permit required**

A. It shall be unlawful for any person to give or provide a fireworks display for the public or for organized groups without first obtaining a public display permit from the City of Bel Aire. The City shall not review an application for a public display permit until the Sedgwick County Fire Marshal has reviewed and approved the application. Said application for a public display permit shall be submitted to the City at least 30 days in advance of the desired public display, and shall be approved in accordance with the provisions of 6.4.11, except all applications will be submitted to the Governing Body at the first meeting after the applicant has met all requirements of submission of the application. No public display permit shall be approved unless the applicant furnishes a certificate of public liability insurance for the display in a minimum amount of \$1,000,000.00 for each occurrence including damage to vehicles, naming the City of Bel Aire as additional insured

and providing for both workers compensation, which is written by an insurance carrier licensed to do business in Kansas. Insurance certificate shall not be cancelled by insured or insurer until written notice is provided to the City Clerk of the City of Bel Aire. In the event of cancellation of the insurance prior to the display, the public display permit shall automatically be revoked and void. Presenting a fireworks display after insurance has been cancelled shall be a violation of this code, and may be prosecuted as an unclassified misdemeanor in accordance with this Article. The application for the public display permit shall clearly state:

1. The name of the applicant.
2. The group for which the display is planned.
3. The location of the display. Shall include:

B. Address of the grounds upon which the display is to be held;

C. A diagram of the grounds on which the display is to be held. The diagram must indicate distances from the point of discharge of fireworks to:

1. the perimeter of the grounds,
2. to all structures located upon the grounds,
3. all structures on abutting properties within 500 feet of the point of discharge,
4. all abutting streets points of ingress/egress to the grounds, and
5. the area at which the audience will be located.
6. The date, time and duration of the display.
7. The nature or kind of fireworks to be used.
8. The name of the person, firm or corporation that will make the actual discharge of the fireworks.
9. The name of the person, firm or corporation that will discharge the fireworks. Must present a valid firework operators certificate issued by the State of Kansas Fire Marshal's Office.
10. Anticipated need for police, fire or other municipal services.

D. No public display permit shall be issued if in the opinion of the Sedgwick County Fire Marshall the location, nature of the fireworks or any other relevant factor creates a hazard, risk of harm, or risk of damage to persons or property.

E. Prior to approval of any public display permit application, the Sedgwick County Fire Marshall shall have the power to issue reasonable rules and regulations for the granting of said public display permit. City law enforcement and the Sedgwick County Fire Marshall are authorized to terminate a fireworks display event if the event operator or party responsible for fireworks detonation violate any such rules and regulations.

F. The Chief of Police of Bel Aire, Kansas, shall review the application to determine whether police or security shall be required as a condition of approval of the public display permit. Such review shall include determination of traffic control concerns, and identifying

and preventing concerns arising from individuals watching the display in unsafe areas located off the display grounds. All costs of security or additional policing requirements shall be borne by the event operator.

G. Only those persons actually approved as operators by the Fire Marshall shall handle or discharge any fireworks at such a public display.

H. Fireworks displays shall be completed by midnight on Fridays and Saturdays and 11:00 pm Sunday through Thursday nights.

I. Public display permit fee shall be \$250.00 per application. Such fee shall be refunded if the public display permit is not issued.

J. No individual, business, or organization shall receive more than one permit for public display of fireworks per calendar year. To limit negative impacts upon abutting properties, a site for a public display of fireworks shall only be authorized for a public display of fireworks once annually. The City shall limit the number of public display permits to four annually.

K. A permit authorizing a public display of fireworks shall hereby require that the permittee remove all trash and debris from the property associated with the public display of fireworks, including both trash and debris generated by the display itself as well as by the attendees to the event.

Section 6.4.6 Location Inspection

Prior to issuance of the permit, an inspection will be made of the applicant's facility for compliance with this Ordinance and other pertinent laws, and no permit shall be issued for any premises not in compliance with such laws. Each location where fireworks are to be sold or displayed for sale shall be inspected by and subject to the standards imposed by the Sedgwick County Fire Marshal. The City Clerk may only issue a permit pursuant to the Ordinance upon proof that the premises have passed the required inspection by the Sedgwick County Fire Marshal.

Section 6.4.7 Location Safety

Approval of all safety precautions and equipment at the sales location shall be by the City Manager or his/her designee, in conjunction with the Sedgwick County Fire Marshal. Safety precautions and equipment shall include fire extinguishers and such other equipment as required by applicable state and city laws and regulations. Fireworks shall not be stored or sold with fifty (50) feet of any source of flame, sparks, or flammable or volatile liquids in excess of one gallon. If housed in a tent, the tent shall be constructed of a flame retardant material, with a certificate of such flame retardant attached. Any electrical cords shall be appropriately protected from damage by weather, the public and automobiles. No sales of fireworks shall occur at any location, building, structure, tent or other similarly describable enclosure in conjunction with the retail sales of non-fireworks related items except as allowed by the City Manager at the written request of the Permittee. Any items sold under this exception must be approved by the City Manager prior to any sale taking place.

Section 6.4.8 Location Parking

Each location where fireworks are to be sold shall provide for the public not less than ten (10) off street vehicular parking spaces, in addition to any necessary employee parking.

Section 6.4.9 Permit Display

Upon qualifying for the permit, the Permittee shall conspicuously post, and prominently display the same along with the Sedgwick County Fire Marshal inspection receipt at the establishment or premises where fireworks are to be sold or displayed for sale.

Section 6.4.10 Permit Application

Applications for permits to sell or transfer fireworks shall not be accepted before the first business day of January of the year for which the permit is to be issued. The City shall only issue four permits to retail establishments or premises to sell or transfer fireworks in any calendar year. Permits will be awarded based upon the standards set forth within this Chapter. Priority of approvals shall be based upon the date upon which the application was received by the city clerk. No individual, business or organization shall receive more than one permit per calendar year.

Section 6.4.11 Application Process

All applications shall be on a form determined by, and include the information requested by, the City Clerk. The appropriate permit fee, in certified funds, must accompany each application. The City Clerk of the City shall present all applications received to the Governing Body of the City at the first meeting in March or the first meeting after receipt of the application, whichever is later. Subject to a determination by the Governing Body that said applicant has met all the requirements set forth within the application and this Article, including a determination as to the appropriateness of the proposed site and the availability of a permit, a permit shall be issued. The City Clerk shall notify each applicant by first-class mail whether said applicant was successful in obtaining a permit within ten (10) business days of the determination by the Governing Body. The permit fee submitted by all unsuccessful applicants shall be returned with the notice that said applicant was not successful in obtaining a permit.

Section 6.4.12 Insurance

Each vendor shall obtain a policy of general comprehensive liability insurance for a minimum coverage of \$500,000 per occurrence, with the City of Bel Aire, Kansas, named as an additional insured, and shall provide the city with a copy of the certificate of such insurance. Such policy or policies shall not be cancelable by the vendor upon less than thirty (30) days' notice.

Each vendor shall obtain a policy of product liability insurance for a minimum coverage of \$500,000 per occurrence for products sold and/or stored within the city by the vendor, and shall provide the city with a copy of the certificate of such insurance. Such policy or policies shall not be cancelable by the vendor upon less than thirty (30) days notice.

Section 6.4.13 Permittee Indemnification

Each vendor shall at all times indemnify the City of Bel Aire, Kansas, its officials, representatives, designees and employees, and shall defend, save and hold them harmless, from and against any and all claims, actions, damages, liability and expense, including but not limited to attorneys and other professional fees, in connection with loss of life, personal injury and/or damage to property arising from or out of the storage, sale, discharge and/or transportation of fireworks by such vendor and vendor's customers, representatives, employees, contractors and designees.

Section 6.4.14 Permit Revocation

Any permit holder violating any provisions shall first be issued a warning by the police department, and on any second or subsequent violation of this article, the police department shall revoke the permit for sale and terminate the sale of fireworks by the violator. Any action deemed extremely negligent or reckless by the Chief of Police may result in immediate revocation of the permit to sale fireworks. No refund of permit fee shall be refunded in association with any permit revoked for violation of this Article, the permit, or the fire code of Sedgwick County, Kansas.

Any permit holder whose permit is revoked hereunder may appeal to the City Manager by notice served upon the City Clerk, and a hearing shall be called and held not less than twenty-four (24) hours from the date of the filing of such notice of appeal. The City Manager may, when in his/her discretion such action is appropriate, impose additional safety requirements upon a vendor prior to reinstating a revoked permit. The determination of the City Manager shall be final.

Section 6.4.15 Permittee Disqualification

No permit shall be issued or renewed to a holder who has been revoked hereunder in a prior year or who has failed to demonstrate financial responsibility. In this regard and by way of illustration, evidence that the holder of a permit has failed to pay the cost of merchandise when due, failed to pay costs associated with leased land or facilities when due, or failed to pay wages of employees when due in connection with sales of fireworks in prior years, may constitute sufficient grounds for the rejection of an application for a permit.

Section 6.4.16 Sale Times

Fireworks permitted under this Article shall be sold only between the hours of 8:00 a.m. and 10:00 p.m., from June 27th through July 4th.

Section 6.4.17 Detonation Times and Location

Fireworks, which may be displayed, detonated, discharged, and/or ignited within the city limits shall only be those devices commonly known as fireworks as defined by the regulations of the Fire Marshal of the State of Kansas.

Individuals age fourteen (14) and older, and individuals under the age of fourteen (14) with adult supervision, may detonate fireworks permitted under this article beginning at 9:00 a.m. on July 4th, and ending at midnight when July 4th falls on a Friday or Saturday, and 11:00 p.m. when July 4th falls on a Sunday – Thursday. Fireworks may be detonated at a private residence, with the permission of an adult residing at that residence, or within the authorized shooting area as described by a Resolution of the Governing Body. However, no firework may be displayed, detonated, discharged, and/or ignited in a manner that may cause personal injury or property damage. The adult granting permission to detonate fireworks shall clear the front yard of that private residence and all adjacent public right-of-way areas of all debris arising from the detonation of the fireworks before 10:00 p.m. on July 5th of that same year.

Section 6.4.18 Emergency Conditions

Upon the determination of the City Manager and based upon recommendations of staff, the discharge of fireworks may be limited, suspended or prohibited within the city limits of the city even during those times generally permitted by this article. Such determination shall be made if it appears to the City Manager that the discharge of fireworks constitutes an immediate hazard to the safety of property or persons within the city. Such limitation, suspension or prohibition shall be by emergency proclamation, signed by the City Manager, which shall be publicized, including posting the City's website, and physically posted at the City Hall. If thereafter, circumstances occur which minimize or eliminate the hazardous condition resulting in such proclamation, the proclamation may be rescinded or modified by subsequent proclamation with similar posting. The Mayor is hereby equally empowered to issue any such proclamation.

Section 6.4.19 Penalty

Any person, whether acting on his or her own behalf, or that of any group or organization, who violates any section of this Article shall be deemed to be guilty of an unclassified misdemeanor, and shall upon conviction, be punished by a fine of not more than \$500 or imprisonment of not more than thirty (30) days, or by both such fine and imprisonment. The municipal court judge may also impose restitution for physical damages arising out of such violations as appropriate. Restitution under this article shall be limited to \$500.00.